

1993

# Estate of Samuel F. Thomas v. Delta Geotechnical Consultants, Inc. : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS

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ESTATE OF SAMUEL F. THOMAS,	)	
	)	
Plaintiff/Appellee,	)	
	)	
vs.	)	
	)	
DELTA GEOTECHNICAL CONSULTANTS,	)	Case No. 930651-CA
INC.,	)	
	)	Priority No. 15
Defendant/Appellant.	)	

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REPLY BRIEF OF APPELLANT

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APPEAL FROM THE JUDGMENT OF THE THIRD CIRCUIT COURT OF  
THE STATE OF UTAH, THE HONORABLE SHEILA MCCLEVE

---

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**FILED**  
Utah Court of Appeals

MAR 24 1994

  
Mary T. Noonan  
Clerk of the Court

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**UTAH COURT OF APPEALS**

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<u>Prince v. R.C. Tolman Const. Co., Inc.</u> , 610 P.2d 1267 (Utah 1980). . . . .	1
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Statutes

(none)

### INTRODUCTION

In ITS responsive brief, Samuel Thomas Estate, (hereinafter "Thomas"), misconstrues the nature of defendant/appellant Delta Geotechnical, Inc.'s (hereinafter "Delta") position on appeal. Delta does not dispute that there was a written lease agreement calling for a fifty percent rent increase. However, Delta argues that the parties modified this provision and substituted a new agreement by their conduct.

### ARGUMENT

#### I. PARTIES CAN, AND IN THIS CASE DID, RESCIND A CONTRACT ENTERED INTO BETWEEN THEM.

In its responsive brief Thomas argues that the contract between the parties is unambiguous and contains a non-waiver provision. Delta does not dispute these points. Rather, Delta maintains that parties to a contract can, and in this case did, rescind a contract entered into between them and substitute a new agreement in its place. Prince v. R.C. Tolman Const. Co., Inc., 610 P.2d 1267 (Utah 1980). Delta's position is that the course and conduct of the parties after the lease had expired, evidences an intention by the parties to rescind the lease and to continue with a contract implied in fact which continued the

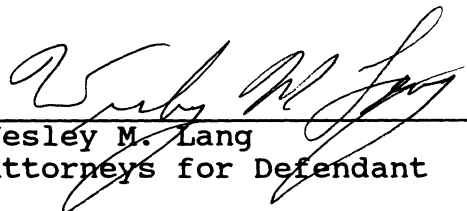
rent at the old rate. The reasons for this are set forth in the appellant's appellate brief.

CONCLUSION

On the basis of its appellate brief and this reply brief, Delta respectfully requests that this Court rule that the parties rescinded the contract as a matter of law, or, in the alternative, rule that an issue of fact exists on this point and remand the case for trial.

DATED this 24 day of March, 1994.

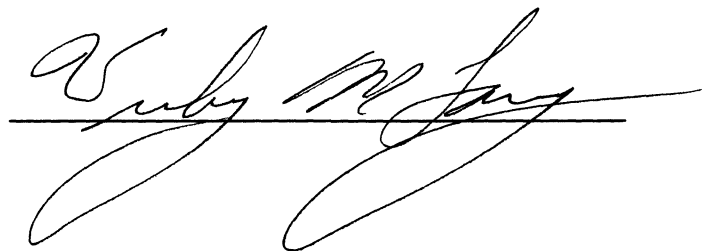
CHRISTENSEN, JENSEN & POWELL, P.C.

By   
Wesley M. Lang  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of March, 1994,  
a true and correct copy of the foregoing Reply Brief of  
Appellant was mailed, postage prepaid, to the following persons:

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A handwritten signature in cursive script, appearing to read "Ruby M. Long", is written over a horizontal line.